

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FERNANDO MARRERO,

Plaintiff,

- against -

R-WAY MOVING & STORAGE, LTD.,

Defendant.
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10 Civ. 5838 (ILG) (LB)

**DEFENDANTS' LOCAL
CIVIL RULE 56.1
STATEMENT OF FACTS
UNDISPUTED
MATERIAL FACTS**

Defendant, R-WAY MOVING & STORAGE, LTD., respectfully submit, pursuant to 56.1 of the Local Rules of this Court, that the following material facts are undisputed:

1. R-Way Moving and Storage Company is in the business of residential moving in the Tri State area. It is in Queens at 59-46 64th St, Masbeth, NY, 11378. Rooney Aff. ¶1.
2. It is owned and operated by Joseph and Christopher Rooney. Rooney Aff. ¶1.
3. R-Way employs two kinds of workers for moves: regular and part time. Rooney Aff. ¶4.
4. A regular worker at R Way is an employee who is contacted each time there is a moving job. At any one time, R-Way has between 4 and 5 regular workers. Rooney Aff. ¶4.
5. Part time workers are contacted by R-Way each time a move requires more staff than the regular workers. Rooney Aff. ¶4.
6. Plaintiff Fernando Marrero was employed by R-Way part time from July 6, 2006 to April 15, 2010. Response to Defendant's First Set of Interrogatories, Interrogatory ¶20.
7. Marrero was paid for days worked each week. Egan Aff. Exhibit 1, Marrero Deposition Transcript pg. 26/14.
8. Marrero is of Hispanic origin. He does not regard himself as African American. He is light skinned. Egan Aff. Exhibit 1, Marrero Deposition Transcript pg. 42/13-43/24.

9. Marrero regarded being called “monkey” as equivalent to being called “spic”. Egan Aff. Exhibit 1, Marrero Deposition Transcript 45/19-22.

10. Danny Pimentel, a Hispanic, is the most senior highest paid regular employee at R-Way. Rooney Aff. ¶3.

11. Marrero was hired by R-Way as a result of an introduction by Danny Pimentel. Rooney Aff. ¶3.

12. While Marrero was working at R-Way, another Hispanic worker, became a regular employee at R-Way. His name is Angel Lopez. Rooney Aff. ¶26.

13. One of the episodes about which Marrero complains, receiving a picture of a case of bananas on his cell phone, was perpetrated, according to Marrero, by Angel Lopez. Marrero Tr. 92/16-24.

14. It was the practice of the men working for R-Way on a job to call each other names. The names that the men called each other included: “Wolf” (Egan Aff. Exh. 2, Angel Lopez Dep. 27/4-6), “Toilet Bowl” (pg. 77/16-23), “Whopper & Little Whopper” (pg. 79/23 - 80/10), “Meterman Mike” (Egan Aff. Exh. 3, Robbie Lee Dep. 37/14-20), “Junkie” (38:16-21) & “Pig” (Egan Aff. Exh. 5 Montefusco Dep. 33/23 - 34/6).

15. R-Way has four full time “employees”- that is, people who are paid on a regular basis irrespective of the number of moves: Joe and Chris Rooney and their wives. Rooney Aff. ¶4.

16. Until April 2011, R-Way also had a part time bookkeeper, Ed Vecchio. Rooney Aff. ¶4.

17. R-Way rarely has moves everyday of the week. On the days in which no moves are scheduled, R-Way only has four full time employees: Joe and Chris Rooney and their wives. Rooney Aff. ¶8-9.

18. Occasions when a move requires as many as twelve movers occur infrequently.

Rooney Aff. ¶10.

19. R-Way's "average" move calls for five men. Rooney Aff. ¶10.

20. Business was slow for R-Way in the first three months of 2010. Rooney Aff. ¶15.

21. Marrero made almost the same money in the first three of 2010 that he made in the first three months of 2009. Rooney Aff. ¶6 (see tables).

22. Work was slow enough in the first three months of 2010 that R'Way had to lay off one of its senior part-time workers, Robbie Lee. Rooney Aff. ¶15.

23. R-Way had less business in the winter months than it had in the spring and summer. Rooney Aff. ¶9.

24. R-Way does not maintain any written records of the dates that moves occur or who is assigned to them. Rooney Aff. ¶5.

25. Documents created to instruct the bookkeeper how much to pay each worker are destroyed in the ordinary course of business following the payment of amounts owed. Rooney Aff. ¶5.

Dated: New York, New York
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